



# FAIRFAX COUNTY

## DEPARTMENT OF CONSUMER AFFAIRS

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January 12, 1993

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

Dear Sirs:

The enclosed is submitted pursuant to the Federal Communications Commission's request for comments in the matter of Notice of Proposed Rulemaking, MM Docket No. 92-259, pertaining to Broadcast Signal Carriage Issues. The original and nine copies are enclosed.

Please do not hesitate to contact me at the above address and telephone number if additional information is needed to properly evaluate the enclosed comments.

Sincerely,

Ronald B. Mallard  
Cable Television  
Administrator/Director

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In the Matter of

Implementation of the Cable Television )  
Consumer Protection and Competition )  
Act of 1992 )

Broadcast Signal Carriage Issues )

MM Docket No. 92-259

COMMENTS OF FAIRFAX COUNTY, VIRGINIA

Ronald B. Mallard  
Cable Television  
Administrator/Director  
Fairfax County Department  
of Consumer Affairs  
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Parkway, Suite #433  
Fairfax, Virginia 22035

January 11, 1993

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JAN 13 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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COMMENTS OF FAIRFAX COUNTY, VIRGINIA

I. INTRODUCTION

On October 5, 1992, the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") was enacted by the United States Congress. In passing the 1992 Cable Act, Congress directed the Federal Communications Commission ("FCC") to establish rules and regulations to implement the Act's provisions. In its Notice of Proposed Rule Making ("NPRM") released on November 19, 1992, the FCC seeks comment on the adoption of one set of these implementation regulations relating to mandatory television broadcast signal carriage ("must-carry") and retransmission consent.

Cable television ("CATV") subscribers in Fairfax County, Virginia ("County") will be directly affected by the regulations adopted by the FCC related to these must-carry and retransmission consent regulations. County subscribers currently receive twelve local, over-the-air broadcast signals and any costs associated with must-carry and retransmission consent could significantly affect the cost of cable television service in the County. Further, subscribers must receive adequate notification regarding must-carry channel positioning and modifications to must-carry lineups. Additionally, subscribers should be able to view local broadcast signals on-channel unless this would be technically infeasible.

By way of background, two cable television systems currently are franchised to serve the residents of the three franchise areas in Fairfax County. The two largest franchise areas, encompassing approximately 300,000 homes, are served by Media General Cable of Fairfax, Inc. ("Media General" or "MGC"). MGC's subscriber system currently comprises over 3,850 plant-miles with over 200,000 subscribers (including those in the separately franchised cities and towns). It is a dual cable, 450 MHz system with an 126 channel capacity. Over 90 of these channels are currently active.

The smaller, separate Reston franchise area of the County is served by Time Warner Cable of Reston ("Time Warner"). Time Warner's subscriber system encompasses over 150 plant-miles of dual, 330 MHz cable. It passes nearly 20,000 homes, including more than 12,400 subscribers and offers an 80 channel capacity. Over 60 of these channels are currently active.

All three franchise areas in Fairfax County are non-exclusive; however, no other cable company has applied for a competing franchise. The two cable companies operating in the County have reached a substantial penetration level of between 63% and 67.5%. Viewing statistics indicate that the twelve over-the-air broadcast signals garner a significant share of the television viewing hours of County citizens. Consequently, the universal, minimal cost availability of these broadcast signals must remain a priority, not only in Fairfax County, but throughout the nation in the implementation of regulations for must-carry and retransmission consent.

## II. DISCUSSION

The discussion and comments which follow include responses to the FCC's request for comments for those paragraphs in the NPRM that most significantly and directly affect the citizens

of Fairfax County. Our comments are divided into the two major components in the NPRM, namely, Must-Carry regulations and Retransmission Consent regulations. Each section of this discussion is referenced by the paragraph to which it relates in the NPRM.

A. Must-Carry Rules and Regulations

1. Paragraphs 14 and 16 - Cable Operators' Response to Requests to Identify Must-Carry Channels.

As stated in the NPRM, the 1992 Cable Act does not specify procedures to be followed by cable operators in responding to requests to identify channels carried pursuant to must-carry requirements. The County recommends that specific procedures be established for such responses in order to guarantee the availability of such information to any citizen, subscriber, regulatory agency, or public body that desires to obtain it.

Specifically, the County recommends that the FCC's regulations contain a provision that cable operators must respond, in writing, to any such requests within 30 days of receipt of the request if the request is made in writing and identifies the party making the request. The 30-day time limit will ensure, in most cases, that the information contained in the written response is timely and up to date. To keep the

requirement from being burdensome, requests not made in writing or which do not adequately identify the party making the request need not be responded to in writing by the cable operator. In such instances, the cable operator should be allowed to respond verbally or direct the party making the request to the operator's public files where a listing of channels carried pursuant to must-carry requirements should be maintained.

By adopting these requirements, any interested party will have the opportunity to verify that the cable operator is complying with the 1992 Cable Act and which channels it is carrying to achieve such compliance.

2. Paragraph 33 - Channel Positioning for Must-Carry Channels.

The FCC solicits comments on what priority should be given to over-the-air channel positions under the must-carry option. The 1992 Cable Act states that a must-carry broadcaster must be given the same cable channel assignment as their over-the-air broadcast channel position if the must-carry broadcaster requests it. This is designed to remove much of the confusion subscribers have experienced in the past in finding channels on the system. However, the FCC notes that there are several instances where this may not be possible. For example, who gets

priority when two over-the-air, must-carry broadcasters have the same channel number? In this case, the County recommends that the station viewed more by the cable system's subscribers should have priority. The County also believes that a must-carry, over-the-air station's channel position should also take priority over any retransmission consent agreement for that same channel. This requirement would protect against channel position becoming a bargaining item in exchange for a lower retransmission cost, which may negatively impact a no-cost must-carry channel.

The FCC has also asked for comment regarding whether a broadcast station is entitled to on-channel positioning when the basic service tier does not encompass such a channel number. The FCC uses as an example a local broadcaster with an over-the-air assignment of channel 50, when a particular basic tier only encompasses channels 2-12. The County believes that this potential problem may be resolved in the case of many addressable CATV systems through the use of channel mapping, programmable scan and "tag" channel grouping functions.

This solution, however, would not assist "cable-ready" (or "converter bypass") subscribers or subscribers to systems with limited channel capacity. While the broadcast channels would be



grouped together, typically only the stations on VHF and low UHF assignments would be on-channel. To resolve this problem, since television manufacturers continue to incorporate more sophisticated channel programming technology in their sets every year, perhaps the FCC could look at requiring similar channel mapping, programmable scan and channel grouping functions in "cable ready" TVs. This would allow converter bypass subscribers and subscribers of limited channel capacity systems to program their sets for on-channel positioning.

3. Paragraph 37 - Notice Required by Cable Operators of Deletions and Repositioning of Must-Carry Channels.

The FCC seeks comments on whether notice to subscribers should be required of cable operators when changes are made in their commercial, must-carry channel positioning or lineup. Although the 1992 Cable Act sets forth requirements for cable operators to notify affected commercial broadcast stations of these types of changes, it does not similarly require notification to subscribers. The County believes that there should be 60 days written notice given to subscribers prior to any of the above changes, due to the significance of must-carry station viewing to consumers and the corresponding effect on a subscriber's value and use of cable television. Without such notice, for example, a popular over-the-air channel that is repositioned on the cable system will not be readily found by

subscribers. Consequently, viewing habits will be disrupted, causing subscriber dissatisfaction. The 60-day notice requirement will also afford an opportunity for subscribers to make a change in service or disconnect service prior to the next billing cycle if they so desire. Overall, this requirement will provide adequate notification in a timely manner and avoid surprises to subscribers.

B. Retransmission Consent Rules and Regulations

1. Paragraph 69 - Effect of Retransmission Consent Compensation on Subscriber Rates.

In the NPRM, the FCC states that it believes that any specific rules and regulations pertaining to the effect on subscriber rates of retransmission consent compensation should be determined in its subsequent NPRM that specifically addresses the rate regulation and rate making provisions of the 1992 Cable Act. The FCC does, though, solicit comments in this NPRM concerning whether commenters disagree with its approach and instead believe that there is an immediate need for such rules or guidelines.

The County agrees that all rate regulation issues should be addressed together. However, the County recommends that a guideline be established in this rule making that any

retransmission consent actions occurring before rate regulation rule making proceedings are completed be taken in accordance with the spirit of the 1992 Cable Act concerning the minimization of cost impact on subscribers. The FCC should emphasize at this point that these costs will be tested for reasonableness, as with all other costs incurred by a cable system, and should not be excessive for the service provided. Such an action will ensure that cable systems and broadcasters are aware of this constraint now, even if they start negotiations for retransmission consent before rate making proceedings conclude.

### III. CONCLUSION

The County's comments in this proceeding pertain to those issues in the NPRM that most directly affect cable subscribers. Essentially, the County recommends the following:

- o Cable operators should be required to respond to public requests to identify must-carry channels within 30 days of the request.
- o Must-carry channels should be cablecast on-channel whenever technically feasible. Priority for on-channel

assignment between two competing broadcasters should be resolved in favor of the must-carry channel with the highest viewership.

- o Cable operators should give 60 days advance notice to subscribers of any commercial, must-carry channel deletions from, or repositioning in, their program line-ups.
- o The FCC should issue guidelines at this time, in advance of the conclusion of its rate making proceedings, cautioning cable operators and broadcasters to minimize the cost impact of retransmission consent on cable subscribers.

Respectfully submitted,



Ronald B. Mallard  
Cable Television  
Administrator/Director  
Fairfax County Department  
of Consumer Affairs